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11 MICHAEL MARCUM

12
13 IN THE UNITED STATES DISTRICT COURT
14
15 FOR THE EASTERN DISTRICT OF CALIFORNIA

16
17 UNITED STATES OF AMERICA
18 Plaintiff,
19 v.
20 MICHAEL MARCUM,
21 Defendant.

22 Case No. 1:22-cr-00164 DJC-BAM

23 DEFENDANT'S REPLY TO UNITED STATES
24 OPPOSITION TO DEFENDANT'S MOTION
25 FOR REDUCTION OF PREVIOUSLY
26 IMPOSED SENTENCE PURSUANT TO 18
U.S.C. § 3582(C)(1)(A)(i)

27 Judge: Daniel J. Calabretta

28 A. **It Is Not Disputed that Michael Marcum Suffers from a Multitude of Severe, Life-Threatening Cardiac Conditions.**

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30 The government does not dispute that Michael Marcum suffers from a multitude of life-
31 threatening cardiac conditions including congestive heart failure, pulmonary hypertension,
32 diastolic dysfunction, syncope, hyperdynamic left ventricle ejection fraction (LVEF 75%),
33 severe right ventricle dilation with severe reduction in systolic function (TAPSE, i.e., tricuspid
34 annual plane systolic excursion 1.3 cm), severe RA (right atrium) dilation, at least moderate
35 tricuspid regurgitation, and severely elevated right ventricular systolic pressure (RVSP 101
36 mmHg). *See Defendant's Motion for Sentence Reduction, § D, p. 5–8.* Nor does the government

1 address the concerns of Eugene M. Spear, MD, a cardiologist with Adventist Health Heart and
 2 Vascular in McMinnville, Oregon contracted by the Bureau of Prisons evaluate Mr. Marcum's
 3 while at FCI Sheridan. On September 27, 2023, Dr. Spear reported that Marcum's was a "tough
 4 case[] to treat," and that the medical formulary at FCI Sheridan was not ideal for treatment of his
 5 condition. *Id.* at 8. He recommended that the BOP contemplate either compassionate release for
 6 Mr. Marcum or transfer to a facility with an in-house medical facility. *Id.*

7 Dr. Spear conducted a follow up appointment on November 15, 2023. He reiterated that
 8 BOP should "consider compassionate release for [Mr. Marcum] as he is in overall poor
 9 condition." *Id.* Dr. Spear also recommended a follow up appointment with a cardiologist in
 10 about two months, i.e., about January 15, 2024, but that has not occurred.

11 **B. Mr. Marcum's Cardiac Conditions require Specialized Care that is Not Being**
 12 **Provided at by the Bureau of Prisons.**

13 The government asserts "Marcum's conditions are both treatable and being treated," but
 14 fails to justify this assertion. While Mr. Marcum was transferred to Rochester FMC for medical
 15 treatment, that occurred on March 6, 2024. Despite Dr. Spear's recommendation, Mr. Marcum
 16 still has not seen a cardiologist, since November 15, 2023. While proper treatment can help
 17 manage the symptoms of diastolic heart failure, there no cure for the condition. *See*
 18 clevelandclinic.org, May 8, 2022, available at <https://my.clevelandclinic.org> › health › diseases ›
 19 2295. Mr. Marcum's continued incarceration is preventing him from obtaining the cardiac
 20 treatment recommended by Dr. Spear. And, as noted by Dr. Spear, the BOP formulary is not
 21 ideal for treatment of Marcum's condition. Marcum's health conditions also prevent him from
 22 working while incarcerated, and shortness of breath related to his heart failure often requires him
 23 to use a 4-wheel walker to move about the facility.

24 **CONCLUSION**

25 Michael Marcum's heart failure and related symptoms constitute extraordinary and
 26 compelling conditions for a reduction of his previously imposed sentence. He suffers from
 27 serious physical and medical conditions that substantially diminish his ability to provide self-care
 28 within the environment of a correctional facility and from which he will not recover. U.S.S.G. §

1 1B1.13(b)(1)(B). These conditions also require long-term specialized care that is not being
2 provided and without which he is at risk of serious deterioration in health or death. U.S.S.G. §
3 1B1.13(b)(1)(C).

4 Michael Marcum's guidelines were calculated based on intended loss amounts, but no
5 actual loss was found after a restitution hearing in this matter. Doc. 46. He was sentenced to a
6 41-month custodial term and his projected BOP release date is May 10, 2025 (Gov't Opposition,
7 Ex. 1, Doc. 61-1, at 2). His BOP eligibility date for home detention is January 10, 2025. *Id.* at 3.
8 Based on the foregoing and the factors set forth in Mr. Marcum's supplemental motion, (Doc.
9 57), Mr. Marcum respectfully requests that this Court grant his motion for a reduced sentence
10 under 18 U.S.C. § 3582(c) and order his immediate release, either with or without a supervised
11 release condition placing him on home detention until May 10, 2025.

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Respectfully submitted,

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HEATHER E. WILLIAMS
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Dated: May 28, 2024

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/s/ Eric V. Kersten
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